COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2) (b)}

Description of Case

Criminal Appeal No. 1592 of 2001
(Old No. 3466 of 1984)

Mohan Singh S/o Bishan Singh,
R/o Village Daichauri, Daigaon,
Tehsil & Police Station Kaladhungi,
District Nainital

… Appellants

Versus

State

… Opposite Party

Sri P.B. Goswami, learned counsel for appellant
Sri J.C. Joshi, Sr. Advocate assisted by Sri Chetan Joshi, learned counsel for the respondent.

Approved for Reporting.
~~Not approved for reporting~~

Date : April 27, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 1592 of 2001

(Old No. 3466 of 1984)

Mohan Singh S/o Bishan Singh,
R/o Village Daichauri, Daigaon,
Tehsil & Police Station Kaladhungi,
District Nainital

… Appellant

Versus

1. Ram Sagar alias Ram Prasad Sagar, Peshkar, Tehsil Kaladhungi, District Nainital, At present Peshkar, Tehsil Ramnagar, District Nainital
2. Bhawani Dutt, Sabhapati, R/o Village Daichauri, Daigaon, Naya Pandey Gaon, P.S. Kaladhungi, District Nainital
3. Trilochan S/o Sri Narain Dutt
4. Kailash Chandra S/o Sri Devi Dutt, Master
5. Bhairav Datt S/o Sri Devi Dutt, Master
6. Dhara Ballabh S/o Sri Devi Dutt, master
7. Rewa Dhara S/o Sri Moti Ram
8. Shankar Dutt S/o Sri Hira Ballabh
9. Gopal Dutt S/o Sri Narain Dutt
10. Tara Dutt brother of Bhawani Dutt, Sabhapati
11. Pan Deo, brother for Bhawani Dutt, Sabhapati
12. Hira Ballabh, brother of Bhawani Dutt, Sabhapati
13. Kirti Ballabh, brother of Bhawani Dutt, Sabhapati
14. Pitambar Khulbe S/o Sri Basudeo
15. Ramesh Chandra S/o Sri Mathura Dutt

Accused/Respondents No. 3 to 15 are R/o Village Daichauri, Nayagaon, Tehsil & P.S. Kaladhungi, District Nainital

…Respondents

Dated: April , 2007

Sri P.B. Goswani, learned counsel for the appellant
Sri J.C. Joshi, Sr. Advocate assisted by Sri Chetan Joshi, learned counsel for the respondents

HON. DHARAM VEER, J.

This appeal, under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred as **Cr.P.C.**), has been preferred by the appellant against the judgment and order dated 29.06.1983 passed by Munsif Magistrate, Nainital in Criminal Case No. 289 of 1982, Mohan Singh Vs. Ram Sagar & others, whereby the learned Munsif Magistrate has convicted the accused Ram Sagar alias Ram Prasad, Ramesh Chandra, Gopal, Bhawani Dutt, Pan Dev, Hira Ballabh, Kirtie Ballabh, Pitamber, Tara Dutt and Rewa

Dhar under section 427 I.P.C. and awarded a fine of Rs. 2,000/- to accused Ram Sagar and in default of fine, six months simple imprisonment was awarded and for the rest of the accused, a fine of Rs.500/- was awarded to each of the accused namely Ramesh Chandra, Gopal, Bhawani Dutt, Pan Dev, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt and Rewa Dhar and in default of fine, one month simple imprisonment was awarded to each of the accused. The above-said accused persons have been acquitted under Section 147, 323 r/w 149 and 506 I.P.C. by giving benefit of doubt. Accused Dhara Ballabh, Trilochan, Shankar Dutt, Bhairav Dutt and Kailash Chandra were acquitted by learned Munsif Magistrate under Sections 147, 323 r/w 149, 506 and 427 I.P.C. Against the said judgment and order dated 29.6.1983, the complainant Mohan Singh has filed the present appeal.

2. Respondent No. 1 Sri Ram Sagar and Respondent No. 7 Rewa Dhar have been died. About the Rewa Dhar-respondent No. 7, there is death report of C.J.M. Nainital dated 12.3.2007 that Respondent No. 7 has died. So far as Sri Ram Sagar, Respondent No. 1 is concerned, counsel for the complainant/ appellant Sri P.B. Goswami has filed his personal affidavit stating therein that Respondent No. 1 Sri Ram Sagar and Respondent No. 7 Sri Revadhar have been died and Mr. J.C. Joshi, Sr. Advocate, learned counsel for the respondents have also stated at bar that Respondent Nos. 1 Sri Ram Sagar and Respondent No.7 Sri Reva Dhar have died. Considering the said facts, the appeal against respondent Nos.1 and 7 stand abated.

3. In brief the prosecution story is this that Respondent Nos 2 to 15 have enmity and jealousy with Mohan Singh due to the reason that in the Pradhan Elections, he had supported Ram Singh and opposed the Bhawani Dutt. The complainant /appellant had constructed a wall to safe his land and crops from the animal of the forests which was about 300 ft. in length and about 5-6 ft. in height and 2 ft. in width and for that he had spent Rs.5,000/- and this wall was in between on the boundary of the village of the complainant and Respondent Nos.2 to 15. It was stated that on 5.9.1982 at about 7:00 A.M., the complainant had gone to his Khuralia field which is two miles away from his house where he has a land and a Paddy crop. His mother, wife and children where at home. On the same day at 11:00 A.M., accused No.1 Ram Sagar, Peshkar along with co-accused Respondent Nos.2 to 15 having unlawful assembly and having the weapons like Sabbal, Gandi and Lathis in their hands, came on the place of occurrence and cried “Where is Mohan Singh” and thereafter they started to demolish the wall constructed in the land of the complainant/appellant. The complainant’s mother had reached there and asked the accused persons not to demolish the wall and she stated that her son Mohan Singh is not at home. On that, the accused persons have stated that they will demolish that wall with the direction of the Peshkar- Accused No.1. Then the mother of the complainant has stated why you are breaking the wall illegally, then the accused persons abused the mother of the complainant and asked that they will break their hand and foots. When the mother of the complainant asked not to abuse and do not demolish the wall, then

accused Dhara Ballabh, Trilochan, Shankar Dutt, Bhairav Dutt and Kailash Chandra dragged the mother of the complainant by catching her hairs and caused injuries to her and asked her to run away from there with a warning that otherwise they will break her hand and foot also. The above said incident was seen by Trilok Singh, Bhupal Singh and Ram Singh etc. and they intervened the matter and informed the complainant about this incident. It was stated that the complainant was advised by his mother, wife and witnesses that the accused persons have surrounded the area and they may kill him, hence they all advised him not to go to lodge the F.I.R. and to get his mother medically examined on the same day. Then on the next day morning on 6.9.1982 from the forest route, the complainant had come to Nainital and on 7.9.1982, his mother was medically examined by the Medical Officer at B.D. Pandey Hospital, Nainital and he has also moved an application to the District Magistrate and the Police Superintendent. The Medical Officer examined Smt. Parvati Devi and prepared the medical report, that report is Ex.Ka-1. The complainant on 7.9.1982 himself had produced his complaint Ex.Ka-3 in the court. After recording the statement under Section 200 Cr.P.C. of complainant Mohan Singh and under section 202 Cr.P.C. of Smt. Parwati Devi and witnesses Trilok Singh, Bhopal Singh, Gopal Singh and Ram Singh, the Munsif Magistrate has passed an order summoning the accused persons under Sections 147, 323, 447, 427 r/w 149 I.P.C. After that the complainant's evidence was taken. The complainant has examine in his favour PW.1 Dr. K.C. Chaudhary, P.W.2 Smt. Parvati Devi, P.W.3 Sri Trilok Singh, P.W.4 Sri Mohan Singh (complainant) and P.W.5 Sri Bhopal

Singh. After that the statement of the accused persons were recorded under Section 313 Cr.P.C. and accused have examined D.W.1 Mohd. Shafi, Judicial Assistant, Collectorate Nainital as a defence witness. After appreciating the evidence on record, the learned Munsif Magistrate vide his judgment and order dated 29.6.1986 has passed the order convicting the accused Ram Sagar alias Ram Prasad, Ramesh Chandra, Gopal, Bhawani dutt, Pan Dev, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt and Rewa Dhar under section 427 I.P.C. and awarded a fine of Rs.2,000/- to accused Ram Sagar and in defult of fine, six months simple imprisonment was awarded and further a fine of Rs. 500/- was awarded to each of the accused namely Ramesh Chandra, Gopal, Bhawani Dutt, Pan Dev, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt and Rewa Dhar and in default of fine, one month simple imprisonment was awarded to each of the accused. The above-said accused persons have been acquitted by learned Munsif Magistrate under Section 147, 323 r/w 149 and 506 I.P.C. by giving benefit of doubt. Accused Dhara Ballabh, Trilochan, Shankar Dutt, Bhairav Dutt and Kailash Chandra were also acquitted by learned Munsif Magistrate under Sections 147, 323 r/w 149, 506 and 427 I.P.C. Against the judgment and order dated 29.6.1983, the complainant has come up in appeal before this Court.

4. I have heard Sri P.B. Goswami, learned counsel for the appellant and Sri J.C. Joshi, Sr. Advocate assisted by Sri Chetan Joshi, learned counsel for Respondent Nos.2 to 6 and Respondent Nos.8 to 15.

5. P.W.1 is Dr. K.C. Chaudhary who has stated that on 7.9.1982, he was posted as Medical Officer in B.D. Pandey Hospital, Nainital. On that day, he had examined Smt. Parwati Devi at 11:20 A.M. and he found the following injuries on her body:-

1. *Contusion on back just below scapula on right side 5cm. x 2 cm.*
2. *Contusion on back over scapula of right side 2 cm. x 3 cms.*

C/o of Pain in Abdomen
Pain on left and right both limber region.
All injuries are caused by blunt object and about 2 days old and simple in nature.

6. Dr. K.C. Chaudhary has also stated that all the injuries were simple in nature and can be caused by some blunt object. He has also stated that the injuries are about two days old. He has proved the report Ex.Ka-1.

7. P.W.2 is Smt. Parwati Devi who is an injured witness. She has stated that on the date of the incident, the month was of Bhado, date was 5th, day was Sunday and time was 3 months before at 11:00 A.M. At that time, she was working at her home and she was providing water to the buffaloes and her son had gone to work in another village. She has also stated that they have constructed a wall which was a lengthy one and on that place, the Peshkar, Tehsil Kaladhungi and 14 other persons of Village Talli Deochaura came and started to demolish the wall. Peshkar was standing there and the rest of the accused started to demolish the wall. She has further stated that she asked these persons not to demolish the wall, her son is not at home, but they demolished the wall. After that accused Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra

caught her hairs and dragged her in the field and beated her by the foots and the accused Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt and Rewa Dhar demolished the wall. She has also stated that in the place of occurrence, all these accused persons No. 1 to 15 had come. This incident was witnessed by Ram Singh, Trilok Singh, Gopal Singh and Bhopal Singh etc. After that she became unconscious and the witnesses had taken Smt. Parvati Devi to her house and her son was called from another village. She has further stated that on that day, they could not go due to the fear of the accused persons. Next day, they went to the Thaple to her brother and on the third day, they reached Nainital. In Nainital, she was medically examined by doctor. She has also stated that she knows all the accused persons prior to the incident. She has also stated that she had informed the whole incident to her son. She was cross-examined at length but nothing has come out from her statement which will create a doubt in her statement. I find the statement of this witness to be trustworthy, reliable and natural.

8. P.W.3 is the Trilok Singh is the eyewitness of the occurrence. He has stated that on 5.9.1982 at about 11 o'clock, he was working in the village Deochauri Daigaon in his own field. Then he heard the noise of the shouting of a lady. He had gone on the spot and then he saw that Parvati Devi was got dragged by her hairs by Bhairav Dutt, Dhara Ballabh, Kailash Chand, Trilochan and Shankar Dutt and they were beating her also by kicks. This incident was being took place on the field of Mohan Singh. The

other accused persons namely Rewa Dhar, Pitamber, Tara Dutt, Pan Dev, Bhawani Dutt, Hira Ballabh, Kirti Ballabh, Gopal Dutt, Ramesh Chandra and Peshkar were also there. The Peshkar was standing there and the rest of the accused were demolishing the wall of the Mohan Singh. They have demolished the wall about 300 ft. in length due to which a loss of Rs. 5,000 to Rs. 6,000/- occurred. He has also stated that they took the Parvati Devi to her house and asked one child to call Mohan Singh from another village. He has also stated that Ram Singh, Gopal Singh and Bhupal Singh also came at the place of occurrence and they have seen the occurrence. This witness was also cross-examined at length but nothing has come out from his statement which will create a doubt in his statement. I find the statement of this witness also to be trustworthy, reliable and natural.

9. P.W.4 is the Mohan Singh, who is the complainant. He has stated that he has a field in Village Deochauri Daigaon which bears the Plot No.45. On the boundary of this plot, in the month of April-May, 1982, he had constructed a wall which was 327 in length, 6ft. in height and 2ft. in width and he had spent Rs. 5,000/- for construction of this wall. He had constructed this wall to safe his land and crop from the forest animals and this wall was constructed in his own land. He has also stated that on 5.9.1982 at 7:00 A.M. in the morning, he had gone to another village of Khudaliya to irrigate his Paddy crop. About 2 o'clock in the day, a boy came and told him that his wall was demolished and his mother was also got injured. She has received the injuries. Then he came to his house and at that time his mother was lying on the cot.

Trilok Singh, Bhupal Singh, Ram Singh and Gopal Singh were also there. These witnesses and his mother told him that his wall was demolished by Bhawani Dutt, Bhairav Dutt, Kailash Chandra, Dhara Ballabh, Revadhar, Trilochan, Gopal Datt, Narain Dutt, Shankar Dutt, Ramesh Chandra, Kirti Ballabh, Pan Dev and Hira Ballabh. Peshkar, Kaladhungi Sri Ram Sagar was also with them. They also told him that his mother was beaten by Bhairav Dutt, Kailash Chandra, Dhara Ballabh, Shankar Dutt and Trilochan and she was dragged by catching her hairs and she was abused also. He has also stated that on that day, he wanted to go to lodge the F.I.R. but due to the fear of the accused that they may kill him, he could not go on the same day to lodge F.I.R. On the next day from the forest area, he had gone to Village Thapli and on the third day, he came to Nainital and lodged the report to District Magistrate and Police Superintendent and also filed a complaint in the court of Nainital. He has proved the copy of the report which he has given to District Magistrate i.e. Ex.ka-2. He has also proved his complaint filed in the court of C.J.M. Nainital and proved the same as Ex.Ka-3. He has also stated that Bhawani Dutt is the Pradhan of his village and Bhawani Dutt has given him a written notice on 16.8.1982, certified copy of which he had filed in the court and that was also admitted by the Bhawani Dutt, hence this document was marked as Ex.Ka-4. He has also stated that the accused persons have filed a complaint against him under section 107/116 Cr.P.C. He has further stated that in the election of Pradhan, he had supported Ram Singh and opposed to accused Bhawani Dutt and due to this enmity, they have demolished the wall due to which a loss of

Rs.5,000/- was occurred to him. This witness was also cross-examined at length but nothing has come out from his statement which will create a doubt in his statement. I find the statement of this witness also to be trustworthy, reliable and natural.

10. P.W.5 Bhupal Singh is also an eyewitness. He has stated that he knows both the parties. He also state that complainant Mohan Singh has come in this village before 2 years and he has purchased the land and on that land, he had constructed a wall by the stones. He has further stated that on 5.9.1982 at about 11:00 A.M., he was ploughing his field then he heard the cries of weeping, then he saw that on the wall of Mohan Singh, 15 persons were standing there and 5 persons were pulling the hairs of the Parvati Devi and Parvati Devi was being dragged by them and rest of the accused were demolishing the wall of by Sabbals and other implements. When he went on the scene of occurrence, Trilok Singh, Gopal Singh and Ram Singh also came over there. Parvati Devi was got dragged by catching her hairs by Bhairav Dutt, Kailash Chandra, Dhara Ballabh, Trilochandra and Shankar Dutt. He has also stated that they asked the accused persons not to do so and they said " who are you". The above –said 5 persons have also beaten the Parvati devi by kicks and fists and due to this reason, she had become unconscious. He also stated that then they have taken the Parvati Devi from there to her house. Mohan Singh was not at home at that time. He had gone to village Roorkee Khudaliya. Then a child namlely Rajendra Singh was sent to call Mohan Singh. He has also stated that by demolishing the wall, the accused have caused a loss of Rs. 5,000/- to Mohan

Singh. This witness was also cross-examined at length but nothing has come out from his statement which will create a doubt in his statement. I find the statement of this witness also to be trustworthy, reliable and natural.

11. After recording the statement of the witnesses of the complainant under Section 244 Cr.P.C., the learned Munsif Magistrate, Nainital has framed the charge on 29.1.1983 against the accused persons under Section 147, 427 r/w 149, 323 r/w 149 and 506 of I.P.C. The charge was explained to the accused persons and they pleaded not guilty and claimed to be tried. Thereafter, the witnesses were cross-examined and the other evidence was also recorded.

12. After that the statement of the accused was recorded under section 313 Cr.P.C. Accused Ramesh Chandra, Pitamber Khulbe, Kirti Ballabh, Hira Ballabh, Pan Dev, Tara Dutt, Gopal Dutt, Shankar Dutt, Reva Dhar, Dhara Ballabh, Bhairav Dutt, Kailash Chand and Trilochan have denied the allegations made against them and they have stated that the case was filed against them falsely. Accused Bhawani Dutt have also denied the allegations in the statement under Section 313 Cr.P.C. He has also stated that the wall was demolished on the direction of Peshkar. Peshkar, Ram Prasad Sagar have also denied the allegations. He has also admitted that the wall was demolished with the help of the accused and rest of the allegations he has denied.

13. Thereafter, the accused have examined D.W.1 Mohd Shafi as a defence witness who was

posted in the Collectorate, Nainital as Judicial Assistant. He has filed a document Ex.Kha-1 and he has stated that Ex.Ka-2, the complaint was rejected by the A.D.M. on 19.11.1982.

14. Learned counsel for the appellant has submitted that on the basis of evidence of P.W.2 Smt. Parvati Devi, P.W.3 Trilok Singh and P.W.5 Bhupal Singh, there is a case made out against the accused persons under Section 147, 323 r/w 149 and 427 r/w 149 and 506 of I.P.C. He has submitted that P.W.2 Smt. Parvati Devi has stated that five persons namely Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra caught her haris and dragged her in the field and beaten he and accused Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt, Revadhar on the direction of Peshkar Ram Sagar have demolished the wall. He further stated that the statement of Smt. Parvati Devi is supported by the evidence of P.W.3 Trilok Singh and P.W.5 Bhupal Singh who are the eyewitnesses.

15. Learned counsel for the respondents has argued that the F.I.R. is delayed. The delay in lodging the F.I.R. is explained by the complainant Mohan Singh and Smt. Parwati Devi that due to the fear of the accused, they cannot go to lodge the report and on the next day, they reached in the village Thapali where his brother was living and from there on the third day, they reached Nainital and they have lodged the complaint before the District Magistrate and Police Superintendent, Nainital and they have also filed the complaint in the court of C.J.M. Nainital. On the same

day, Smt. Parvati Devi was medically examined by Dr. K.C. Chaudhary, P.W.1. Hence, delay in lodging the F.I.R. is properly explained on the basis of the above circumstances and as such the argument of learned counsel for the respondents has no force.

17. Learned counsel for the respondents next argued that the injuries on the body of Smt. Parvati Devi could not have come as stated by the prosecution. This argument of learned counsel for the respondents is misconceived because there are two contusions on the back just below on the scapula which are possible in the manner in which it has been stated by prosecution witnesses. Hence, the argument advanced by learned counsel for the respondents due to the aforesaid reasons cannot be accepted.

18. From the evidence of Smt. Parvati Devi and other witnesses Trilok Singh, Mohan Singh, Bhupal Singh, it is well established that these accused persons No. 1 to 15 have come on the scene of occurrence on the field of Mohan Singh at Village Deochauri Daigaon on 5.9.1982 at 11:00 A.M. and they have formed an unlawful assembly with the common object to demolish the wall constructed on the land of Mohan Singh, which was about 33ft. in length, 5-6 ft. in height and about 2 ft. in width and when Smt. Parvati Devi have asked not to do so, then the five accused persons namely Dhara Ballabh, Trilochan, Shankar Dutt, Bhairav Dutt and Kailash Chandra with the common intention beaten Smt. Parvati Devi and the rest of the accused namely Rewa Dhar, Pitamber, Tara Dutt, Pan Dev, Bhawani Dutt,

Hira Ballabh, Kirti Ballabh, Gopal Dutt and Ramesh Chandra have demolished the wall.

18. From the evidence discussed above, it is clear that on 5.9.1982 at 11:00 A.M., the accused persons No. 1 to 15 had formed an unlawful assembly and they came in the field of Plot No. 45 of Mohan Singh with the common object and with the common intention to demolish the wall of Mohan Singh. When P.W.2 Parvati Devi has told them not to demolish the wall, the accused persons have used the violence with the common object and with the common intention and they demolished the wall of Mohan Singh. In this way, all the accused persons have committed an offence punishable under Section 147 I.P.C.

19. From the evidence discussed above, it is also clear that Smt. Parvati Devi had requested the accused No. 1 to 15 not to demolish the wall as his son Mohan Singh was not in the house, then five accused persons namely Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra have caught her hairs and dragged her in the field and caused the injuries to her which is proved by P.W. 1 Dr. K.C. Chaudhary and the medical report Ex.Ka-1. The testimony of Smt. Parvati Devi is also supported by P.W. 3 Trilok Singh and P.W.5 Bhupal Singh who are the eyewitnesses. In this way, it is clear that the accused Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra have committed an offence punishable under Section 323 read with Section 149 I.P.C. as each and every member of this unlawful assembly has worked in prosecution of the common object of that assembly and the every member of that assembly knew the common object i.e. to

demolish the wall and in order to prove common purpose, five persons namely Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra have caught the hairs of Smt. Parvati Devi and dragged her in the field and caused the injuries to her and rest of the accused persons have demolished the wall. Hence, in this way each and every member of the same assembly is guilty of the offence punishable under Section 149 I.P.C.

20. Smt. Parvati Devi has also stated that accused Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt, Revadhar on the direction of Peshkar Ram Sagar have demolished the wall with the common object and with the common intention and by that they have committed mischief and caused a loss of Rs.5,000/- to Mohan Singh. Hence, they are liable to be convicted for an offence punishable under Section 427 r/w 149 I.P.C. as each and every member of this unlawful assembly has worked in prosecution of the common object of that assembly and the every member of that assembly knew the common object i.e. to demolish the wall and in order to prove common purpose, ten accused persons namely Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt, Revadhar on the direction of Peshkar Ram Sagar have demolished the wall. Hence, in this way each and every member of the same assembly is guilty of the offence punishable under Section 149 I.P.C. Therefore, accused Ram Sagar, Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt and

Revadhar have committed the offence punishable under Section 427 r/w 149 I.P.C.

21. However, from the evidence discussed above, no case under Section 506 I.P.C. is made out against the accused/respondents. There is no direct evidence to prove the offence punishable under Section 506 I.P.C. against the accused/respondents.

22. Learned counsel for the accused/ respondents lastly submitted that the above said incident was taken place about 25 years back and now the accused persons namely Ramesh Chandra is aged about 45 Years, Gopal Dutt is 61 years, Bhawani Dutt is 68 years, Pan Datt is 73 years, Hira Ballabh is 65 years, Kirti Ballabh is 65 years, Pitamber is 62 years, Tara Dutt is 49 years, Shankar Dutt is 49 years, Trilochan is 58 years, Bhairav Dutt is 49 years, Dhara Ballabh is 46 years and Kailash Chandra is now 48 years of age, as this argument regarding the age of the accused persons is also supported from the age of the accused persons recorded in the statement under Section 313 Cr.P.C., hence now by sending these persons into the jail, the ends of justice will not be served. This incident was taken place 25 years back and after considering the age of the accused persons and seeing the nature of the crime committed by the accused/respondents and the facts and circumstances of the case, I think it proper to award the sentence in the form of fine.

23. In view of the above discussion, all the accused persons namely Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, Tara Dutt, Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra Are convicted for an offence punishable under Section 147

I.P.C. and they are awarded a fine of Rs. 1,000/- each and in case of default of fine, three months simple imprisonment is awarded to each of them.

24. Accused Ramesh, Gopal Dutt, Bhawani Dutt, Pan Dutt, Hira Ballabh, Kirti Ballabh, Pitamber, and Tara Dutt are further convicted for an offence punishable under Section 427 r/w 149 I.P.C. and they are awarded a fine of Rs.500/- each and in case of default of fine, one month simple imprisonment is awarded to each of them.

25. Accused Shankar Dutt, Trilochan, Bhairav Dutt, Dhara Ballabh and Kailash Chandra are also convicted for an offence punishable under Section 323 r/w 149 I.P.C. and they are also awarded a fine of Rs.500/- each and in case of default of fine, one month simple imprisonment is awarded to each of them.

26. From the amount awarded in the form of sentence, Rs.6,000/- after the receipt of the fine, shall be paid to Mohan Singh as awarded by learned Munsif Magistrate, Nainital. The amount of Rs. 2,000/- shall also be paid to Smt. Parvati Devi from the amount of fine so recovered.

27. In view of the above, the appeal is partly allowed. The judgment and order dated 29.6.1983 passed by learned Munsif Magistrate, Nainital stands modified accordingly.

28. Let the record of the case be sent to the trial court for compliance.

(Dharam Veer, J.)

Dated: April 27, 2007
Rajeev Dang